IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.387 OF 2004
IN
SUMMARY SUIT NO.3 OF 2004

MIRC Electronics Ltd. ..Plaintiffs

Vs.

Vishal Gurnani ..Defendant

Mr.V.R.Dhond a/w Mr.Ashish Kamath i/b M/s.A.Mehta Laljee and Co.for the plaintiffs

Ms.K.C.Nichani for the defendant

CORAM : S.U.KAMDAR, J
DATED : 3RD OCTOBER, 2005

P.C.:

1. The present suit is filed for goods sold and delivered under 10 invoices and the claim is for sum of Rs.14,16,812.98. The defence raised by the defendants is that the suit is wrongly filed against Vishal Gurnani. Infact it is his case that the transactions were between plaintiffs and Tranquil Distributors P.Ltd. and not sole Proprietary Concern of the defendant. However, from the perusal of the invoices, it is clear that the same are addressed to the sole proprietary concern and not to the Company. The learned

counsel for the defendant has however,drawn my attention to the rubber stamp thereon which is of Private Limited Company which has been placed while accepting the delivery of the goods. However, there is no correspondence from 2000 to 2004 protesting the invoice being issued in the name of sole proprietary concern. There is no other correspondence indicating that the contract was between private limited company and plaintiff.

2. The next contention raised is that the defendant was entitled to discount and commission and incentive charges and therefore claim is not due and payable. Amount which is not paid is of the sum of Rs.14,16,812/- Even if I accept the case of the defendant that 10% discount was payable, still huge amount is outstanding by the defendant to the plaintiffs. I am unable to accept this defence in view of the fact that there is no material to show that there was any such arrangement between the parties. There is no defence on merits. The learned counsel for the defendant has also argued that suit is on account. On perusal of the plaint,it is clear that suit is

filed on each of the separate invoices which is invoice cum delivery challan. There is no defence in the present suit. However, to give an opportunity to defend the case, I direct the defendant to deposit a sum of Rs.10 lacs within 4 weeks, failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.